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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTONIO FAHIE,

Plaintiff,

v.

MERCY HOSPITAL, et al.,

Defendants.

CASE NO. 1:09-CV-01024-LJO-DLB PC

ORDER REVOKING PLAINTIFF’S IN
FORMA PAUPERIS STATUS ON APPEAL

_____ /

Plaintiff Antonio Fahie (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff was proceeding pro se and in forma pauperis in this civil rights action.

Plaintiff initiated this action by filing his complaint on June 11, 2009. Plaintiff filed his first amended complaint on July 7, 2009. On October 28, 2009, the magistrate judge assigned to this action screened Plaintiff’s first amended complaint and found that it failed to state a claim. Plaintiff was provided leave to file a second amended complaint. November 13, 2009, Plaintiff filed his second amended complaint. On May 19, 2010, the magistrate judge issued a Findings and Recommendation recommending dismissal of certain claims, and providing Plaintiff leave to amend as to his claims against Defendant Mercy Hospital. This order was adopted on June 21, 2010 by the undersigned. On July 22, 2010, Plaintiff filed his third amended complaint. On December 3, 2010, the magistrate issued a Findings and Recommendations recommending dismissal of the action for failure to state a claim. On February 2, 2011, the undersigned adopted the Findings and Recommendations in full, dismissing the action. Plaintiff filed a motion for

1 relief from final judgment on February 25, 2011. On July 22, 2011, the undersigned denied
2 Plaintiff's motion. Plaintiff filed his notice of appeal on August 8, 2011.

3 Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if
4 the trial court certifies in writing that it is not taken in good faith." The Court finds that
5 Plaintiff's appeal is not taken in good faith. Plaintiff's allegations failed to state a claim.
6 Plaintiff was provided several opportunities to amend his pleadings to cure the deficiencies, and
7 was unable to do so. Mere negligence in treating or diagnosing a medical condition is not a
8 cognizable 42 U.S.C. § 1983 claim. *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004).

9 Accordingly, Plaintiff's appeal is not taken in good faith, and is frivolous. Plaintiff's in
10 forma pauperis status is HEREBY ORDERED revoked for purposes of his appeal.

11 IT IS SO ORDERED.

12 **Dated:** August 15, 2011

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE